

**REMARKS**

Reconsideration of the above identified application, in view of the above amendments and the following remarks, is respectfully requested.

**Status of the Claims**

Claims 1-21, 58, and 59 are pending. Claims 1, 12, 58, and 59 have been amended. Claims 54-56 have been canceled without prejudice or disclaimer of the subject matter therein. Claims 22-53, 57, and 60-68 were canceled in a previous amendment. No new matter has been added.

**Rejection Under 35 U.S.C. § 112**

Claims 54-56 stand rejected under 35 U.S.C. § 112, second paragraph. Claims 54-56 have been canceled, thus, rendering this rejection moot.

**Rejection Under 35 U.S.C. § 103**

Claims 1-5, 7-16, 19-21, 58, and 59 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over EP 0673131A2 to Ishikawa et al. (“Ishikawa”).

With respect to the rejection of claims 1-5, 7-16, 19-21, 58, and 59, the Examiner has rejected the claims under 35 U.S.C. § 103(a), but yet fails to cite any art which in combination with Ishikawa discloses or suggests the invention of claims 1-5, 7-16, 19-21, 58, and 59. Accordingly, Applicant has treated the rejection of claims 1-5, 7-16, 19-21, 58, and 59 as if the Examiner rejected these claims under 35 U.S.C. § 102.(b).

Amended independent claims 1 and 12 recite “wherein the means for delaying the transmission of successive ones of said first packet data symbols and the means for delaying the transmission of successive ones of said second data packet are operable to result in a non-hierarchical construction.” Independent apparatus claims 58 and 59 have been amended to recite

similar subject matter. Applicant submits that Ishikawa discloses transmitting hierarchical data layers in corresponding numbers of interleavings where “two consecutive data are isolated by a proper distance so as not to be adjacent with each other in the two-dimensional arrangement.” (Ishikawa, col. 10, lines 47-50 and Figs. 6-7). Furthermore, Ishikawa discloses that “the interleaving is realized in the specific modulation forms corresponding to the respective hierarchical layers.” (Ishikawa, col. 13, lines 18-20). Ishikawa further discloses that specific modulation forms are associated with each carrier, and that each modulation form requires a different carrier-to-noise ratio (Ishikawa, col. 6, line 50 through col. 7, line 1). In contrast, amended claims 1, 12, 58 and 59 recite that the interleavings are in a non-hierarchical construction.

Applicant submits that Ishikawa does not disclose each and every feature of claims 1, 12, 58, and 59. Additionally for the aforementioned reasons, Applicant submits that Ishikawa does not disclose nor suggest all of the features of claims 1, 12, 58, and 59. Claims 2-5, 7-11 depend from claim 1. Claims 13-16 and 19-21 depend from claim 12. Applicant submits that claims 2-5, 7-11 and 13-16 and 19-21 are patentable over Ishikawa for at least the same reasons as their respective base claims.

Reconsideration and withdrawal of the rejection is respectfully requested.

Claims 6, 17, and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ishikawa in view of the Examiner’s statements of what was known in the art at the time of the invention.

Applicant submits that the Examiner’s statements of what was known in the art do not supply those features of claims 6, 17 and 18 which are missing from their respective base claims, as discussed above. Therefore, the combination of the Ishikawa and the Examiner’s statements do not

disclose nor suggest the invention of claims 6, 17, and 18. Accordingly, the Examiner has failed to meet the burden of establishing a *prima facie* case of obviousness.

Reconsideration and withdrawal of the rejection is respectfully requested.

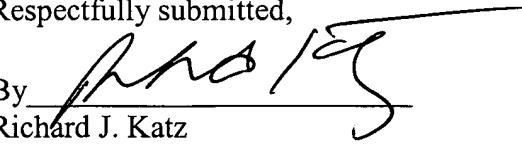
### CONCLUSION

Each and every point raised in the Office Action dated April 5, 2005 has been addressed on the basis of the above amendments and remarks. In view of the foregoing it is believed that claims 1-21, 58 and 59 are in condition for allowance and it is respectfully requested that the application be reconsidered and that all pending claims be allowed and the case passed to issue.

If there are any other issues remaining which the Examiner believes could be resolved through a Supplemental Response or an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned at the telephone number indicated below.

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Respectfully submitted,

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